

STATE OF MICHIGAN
COURT OF APPEALS

TIFFANY DENISE JONES,

Plaintiff-Appellant/Cross-Appellee,

v

PHILLIP LAMAR PEAKE,

Defendant-Appellee/Cross-Appellant.

UNPUBLISHED
March 10, 2016

No. 328566
Oakland Circuit Court
Family Division
LC No. 2013-811123-DP

Before: GLEICHER, P.J., and JANSEN and SHAPIRO, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendant's motion to set aside a default judgment against him and dismissing the case. Defendant cross-appeals, contending that the Uniform Child Custody and Jurisdiction Enforcement Act (UCCJEA), MCL 722.1101 *et seq.*, applied to plaintiff's claim and that the trial court lacked jurisdiction under the act. We reverse and remand for further proceedings consistent with this opinion.

In 2013, plaintiff filed a paternity action asserting that defendant was the father of her son, KP, who was born in 2006. She alleged that the child was conceived in Wayne County and that she and the child resided in Oakland County. The Oakland County prosecutor made multiple attempts to serve defendant at his listed address in Detroit, and although persons at the address stated that defendant lived there, service was not accomplished. On plaintiff's request, the trial court issued an order for alternative service and defendant was served by first class mail and the tacking of the summons and complaint to the door of the subject address.

Defendant's counsel filed a limited appearance and a motion to dismiss for lack of personal jurisdiction. The trial court found that there was sufficient evidence to find that defendant resided at the subject Michigan address. The court later ordered defendant to submit to genetic testing to determine KP's paternity. Defendant did not comply with the court's order despite repeated adjournments of trial in order to allow him to do so. After several months, plaintiff filed a motion for entry of default judgment based upon defendant's refusal to submit to the genetic testing. Before a ruling on that motion was issued, defendant filed a motion for change in venue, which the trial court denied. The trial court then granted plaintiff's motion for

a default judgment. The default judgment and a child support order were entered against defendant on September 5, 2014.

Arguing that the trial court lacked subject matter jurisdiction, defendant moved to set aside the default judgment. Defendant asserted that pursuant to the UCCJEA, the trial court did not have subject matter jurisdiction unless plaintiff or KP resided in Michigan. As part of his argument, he asserted that plaintiff and KP did not reside in Michigan as required by the Paternity Act, MCL 722.711 *et seq.*

There was conflicting evidence concerning plaintiff's residency. Plaintiff submitted an affidavit stating that she and KP lived in both North Carolina and Michigan, but she conceded that they lived in North Carolina most of the time. The trial court set the matter for an evidentiary hearing, but both parties declined to present testimony and instead relied on the pleadings and affidavits. The trial court concluded that, pursuant to MCL 722.714(1), subject-matter jurisdiction was conferred in the circuit court where the parties or the child resides. The court stated that was undisputed that defendant did not reside in Oakland County and that plaintiff had conceded KP's home state was North Carolina. Thus, the court concluded that it lacked subject matter jurisdiction unless plaintiff resided in Oakland County. The court further concluded that it was proper to dismiss the case for lack of subject-matter jurisdiction because plaintiff had offered no proofs that she resided in Oakland County.¹ This appeal follows.

I. SUBJECT-MATTER JURISDICTION UNDER THE PATERNITY ACT

Plaintiff argues that the trial court erred when it determined that, pursuant to MCL 722.714(1), it lacked subject-matter jurisdiction over the case.² We agree.

Subject-matter jurisdiction “is the right of the court to exercise judicial power over a class of cases, not the particular case before it.” *Grebner v Oakland Co Clerk*, 220 Mich App 513, 516; 560 NW2d 351 (1996). “It is the abstract power to try a case of the kind or character of the one pending, but not to determine whether the particular case is one that presents a cause of action or, under the particular facts, is triable before the court in which it is pending.” *Id.* “[C]ircuit courts are presumed to have subject-matter jurisdiction unless jurisdiction is expressly prohibited or given to another court by the constitution or statute.” *In re Wayne Co Treasurer*, 265 Mich App 285, 291; 698 NW2d 879 (2005), citing MCL 600.605.³

¹ The trial court did not address defendant's alternative argument that the trial court lacked subject matter jurisdiction because the case was governed by the UCCJEA. However, on cross-appeal, defendant argues that the UCCJEA provides an alternate basis for this Court to affirm the trial court's ruling.

² “Whether a court has subject-matter jurisdiction is a question of law that this Court reviews de novo.” *Teran v Rittley*, ___ Mich App ___, ___; ___ NW2d ___ (2015); slip op at 4.

³ MCL 600.605 provides:

MCL 722.714 provides that in paternity action “[a] complaint shall be filed in the county where the mother or child resides” or “[i]f both the mother and child reside outside of this state, then the complaint shall be filed in the county where the putative father resides or is found.”

In *Morrison v Richerson*, 198 Mich App 202, 207; 497 NW2d 506 (1993), this Court held that unlike venue in a divorce action, venue in a proceeding under the Paternity Act was not jurisdictional. We expressly held that MCL 722.714(1)—the statute relied upon by the trial court in this case—did not “provide a jurisdiction-stripping consequence for misfiled complaints.” *Id.* at 207-208. Moreover, in *Teran v Rittley*, ___ Mich App ___, ___; ___ NW2d ___ (2015); slip op at 4, this Court again rejected a defendant’s argument that MCL 722.714(1) stripped the circuit court of subject-matter jurisdiction. We held that “MCL 722.714(a) does not expressly limit the circuit court’s subject-matter jurisdiction.” *Id.* Instead, “this section concerns venue and instructs where a paternity action should be filed.” *Id.* We concluded that “the Paternity Act patently grants the circuit court subject-matter to determine the paternity of a child born out of wedlock and to order child support.” *Id.*, citing *LME v ARS*, 261 Mich App 273, 278-279; 680 NW2d 902 (2004); *Altman v Nelson*, 197 Mich App 467, 473-474; 495 NW2d 826 (1992); and *Morrison*, 198 Mich App at 207. Accordingly, the trial court in this case erred when it concluded that MCL 722.714(1) stripped it of subject-matter jurisdiction.

II. UCCJEA APPLICABILITY

On cross-appeal, defendant contends that plaintiff’s action was effectively a “child-custody proceeding” under the UCCJEA, and that, consequently, plaintiff could only file the complaint in KP’s home state of North Carolina. We disagree.

The UCCJEA is intended to resolve jurisdictional disputes relating to child-custody determinations and proceedings. The act’s definitions section provides, in relevant part:

(c) “Child-custody determination” means a judgment, decree, or other court order providing for legal custody, physical custody, or parenting time with respect to a child. Child-custody determination includes a permanent, temporary, initial, and modification order. Child-custody determination does not include an order relating to child support or other monetary obligation of an individual.

(d) “Child-custody proceeding” means a proceeding in which legal custody, physical custody, or parenting time with respect to a child *is an issue*. Child-custody proceeding includes a proceeding for divorce, separate maintenance, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue may appear. Child-custody proceeding does not include a proceeding

Circuit courts have original jurisdiction to hear and determine all civil claims and remedies, except where exclusive jurisdiction is given in the constitution or by statute to some other court or where the circuit courts are denied jurisdiction by the constitution or statutes of this state.

involving juvenile delinquency, contractual emancipation, or enforcement under article 3. [MCL 722.1102 (emphasis added).]

Plaintiff requested child support and a judgment of filiation against defendant under the Paternity Act. Throughout the lower court proceedings, plaintiff never raised the issues of legal custody, physical custody, or parenting time. Defendant was equally silent on those issues and, indeed, vociferously disputed that he was KP's father. Accordingly, legal custody, physical custody, and parenting time were never issues in the proceeding, so MCL 722.1102(d) does not apply to strip the trial court of jurisdiction. See *Fisher v Belcher*, 269 Mich App 247, 260; 713 NW2d 6 (2005) (holding that a party's action was not a UCCJEA child-custody proceeding because the "initial pleadings were not custodial in nature").

Defendant asserts that MCL 722.1102(d) governed plaintiff's action because it involved paternity; however, the second sentence of that section merely lists types of actions that may qualify as UCCJEA child-custody proceedings *provided that* custody or parenting time is an issue in the action. Further, regardless of the clarifications in MCL 722.1102(d) regarding what sorts of actions *may* constitute a child-custody proceeding, the first sentence provides that a child-custody proceeding "*means* a proceeding in which legal custody, physical custody, or parenting time with respect to a child *is an issue.*" (emphasis added). By the statute's express terms, a paternity proceeding in which custody or parenting time is not an issue is not a child-custody proceeding.

Defendant also argues that the court's orders of filiation and child support necessarily and implicitly constituted a "child-custody determination" under MCL 722.1102(c). The UCCJEA defines a child-custody determination as "a judgment, decree, or other court order *providing for legal custody, physical custody, or parenting time* with respect to a child." MCL 722.1102(c) (emphasis added). The trial court never issued an order regarding custody or parenting time. Instead, the court only entered orders pertaining to child support and paternity, without determining legal custody, physical custody, or parenting time. Accordingly, defendant is not entitled to relief on this ground.

III. ALTERNATIVE GROUNDS FOR SETTING ASIDE DEFAULT JUDGMENT

Also on cross-appeal, defendant argues that even if we conclude that the trial court possessed subject-matter jurisdiction, this Court should nevertheless affirm the court's order setting aside the default judgment because the trial court could have granted the motion to set aside the default for numerous alternative reasons. However, although defendant identified court rules and case law that would permit a trial court to set aside a default judgment, he failed to identify how the case law and court rules applied to the facts of this case. "It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position." *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959). Accordingly, we decline to address this issue further.

IV. CONCLUSION

The order setting aside the default judgment is reversed and the case remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Elizabeth L. Gleicher

/s/ Douglas B. Shapiro